

### **REMARKS**

The Final Office Action mailed March 26, 2007 has been carefully considered. Reconsideration in view of the following remarks is respectfully requested.

#### **Claim Objections**

Claim 12 stands objected to because of informalities. Claim 12 has been amended to overcome the objection. It is respectfully submitted that Claim 12 has been appropriately corrected.

#### **Rejection(s) Under 35 U.S.C. § 103 (a)**

Claims 8-12 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ault-Riche et al. (U.S. pub. no. 2004/0241748) in view of Woudenberg et al. (U.S. pat. no. 6,660,147).

Claim 13 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ault-Riche et al. (U.S. pub. no. 2004/0241748) in view of Massey et al. (U.S. pat. no. 6,362,011). Applicants respectfully traverse.

Under MPEP §706.02(j), in order to establish a prima facie case of obviousness required for a §103 rejection, three basic criteria must be met: (1) there must be some suggestion or motivation either in the references or knowledge generally available to modify the reference or combine reference teachings (MPEP §2143.01), (2) a reasonable expectation of success (MPEP §2143.02), and (3) the prior art must teach or suggest all the claim limitations (MPEP §2143.03). See In re Royka, 490 F. 2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Applicant requests reconsideration of the Claim 8 rejection. Amended Claim 8 recites the steps:

examining the spatial structure of the image and distribution of light energy in the image with respect to one or more references, **measuring noises which are**

**created by the sample analysis** and defining one or more regions of interest so that measuring information can be extracted

and

extracting the measuring information, **wherein the extracted information is specific to the interaction of the light beam with the sample**

Ault-Riche does not disclose these elements. Rather, Ault-Riche teaches measuring noise arising from **neighboring** samples, arising from an attempt to analyze multiple samples on an array. In other words, the true luminosity measurement of a sample at a particular locus is transformed by the noise cause by other samples on the array.

In contrast to the applicants claim, Ault-Riche's concern with measuring "neighbor luminosity effects" and "compensating for the neighbor luminosity effects of adjacent neighbor loci from the image data for the particular locus," the present invention is concerned with noise created by illuminating the specific sample itself, caused for example by the meniscus of the sample, etc.

Ault-Riche describes an analysis of an image such that invariable positions in chromosomes may be detected. Accordingly, there is a spatial analysis of only one image. In cytometry, the same analysis could be done by passing many samples before a detector. The spatial distribution of samples replaces a time distribution.

Thus Ault-Riche is directed to removing luminosity effects to other interrogation positions in which the sample is analyzed. In Ault-Riche it is not possible to procure time distribution of measures because the measure signal is the source of the perturbation, *i.e.*, noises are due to the position of the sample in the measure zone. If the measure signal disappears (the excitation source being stopped) or if the analyte concentration in the sample changes, the information due to noises disappears or changes with the sample, and it is therefore no longer possible to access said information to make corrections.

Indeed, in Ault-Riche the measured interrogation zones react differently as a function of the analyzed medium. A first zone will react in the presence of a product A; a second zone will react in the presence of a product B. Zones are arranged to allow the measurement of parasitic signals which are due to the sample, and then to suppress said parasitic signals.

Woudenberg and Massey fail to remedy the above-mentioned shortcomings of Ault-Riche with respect to Claim 8. Applicants therefore respectfully urge that Claim 8 is in condition for allowance.

Applicant also requests reconsideration of the Claims 9-13 rejection. These rejections are respectfully traversed for at least the reason that each of the rejected claims ultimately depend from base claim 8. The arguments set forth above regarding the base claim 8 are equally applicable here. Base claim 8 being allowable, the dependent claims must also be allowable.

In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance.

### **Conclusion**

It is believed that this Amendment places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited. If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below. Please charge any additional required fee or credit any overpayment to our deposit account number 50-1698.

Respectfully submitted,  
THELEN REID BROWN RAYSMAN & STEINER LLP

A handwritten signature in cursive script, appearing to read "Theresa Takeuchi", written over a horizontal line.

Theresa A. Takeuchi  
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